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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,	)	<b>2:15-CR-144-KJD-PAL</b>
	)	
Plaintiff,	)	<b>MOTION TO CONTINUE</b>
	)	<b>GOVERNMENT'S RESPONSE</b>
v.	)	<b>DEADLINE</b>
	)	
DON EUGENE WHITE,	)	
	)	
Defendant.	)	
_____	)	

**MOTION TO CONTINUE EVIDENTIARY HEARING**

The United States of America, by and through DANIEL G. BOGDEN, United States Attorney, and Phillip N. Smith, Jr., Assistant United States Attorney, hereby files a Motion to Continue the Government's Response Deadline to the Defendant's "Motion to Suppress Evidence Seized in Violation of the Fourth Amendment" (Docket #14) in the above-entitled manner, currently set for July 20, 2015, for a period of fourteen (14) days.<sup>1</sup>

This Motion is filed for the following reasons:

1. The Defendant filed a "Motion to Suppress Evidence Seized in Violation of the Fourth Amendment" (hereinafter, "Defendant's Motion") on July 1, 2015. *See* Docket #14.

<sup>1</sup> PACER set the Government's response deadline for July 18, 2015, which was a Saturday.

1           2.       Undersigned counsel was in trial in the matter of *United States v. Aaron Thomas*,  
2 2:14-cr-368-APG-PAL up to and including July 2, 2015. Shortly after the conclusion of that  
3 matter, undersigned counsel had to prepare for and conduct a suppression hearing in the matter  
4 of *United States v. Antwan Fortenberry*, 2:14-cr-387-JAD-NJK. Said suppression hearing  
5 occurred on July 6, 2015. Undersigned counsel was also out of the office for a total of five (5)  
6 working days during the time from July 6, 2015 to the present.

8           3.       Due to the press of business, undersigned counsel has been unable to adequately  
9 research the issues raised in the Defendant's Motion in order to prepare and file an appropriate  
10 response. Additionally, undersigned counsel needs to speak with the police officers who took  
11 part in the instant incident before filing a response.

13           4.       Undersigned counsel contacted counsel for the Defendant on July 17, 2015 to  
14 request a stipulation for an extension of the Government's response deadline. Undersigned  
15 counsel was informed by counsel for the Defendant on July 20, 2015 that he (the Defendant)  
16 would not consent to an extension of the Government's response deadline, thereby necessitating  
17 the Government filing the instant motion.

19           5.       The Defendant's trial is presently set for August 10, 2015; however, the  
20 undersigned expects that the parties will enter into a stipulation to continue the trial, and that the  
21 trial will be continued, given the presently-ordered briefing schedule for pre-trial motions and the  
22 anticipated necessity to conduct an evidentiary hearing in this matter. This is wholly  
23 independent of the Government's instant request.

25           6.       The Government is requesting a brief 14-day extension of the response deadline  
26 in order to have sufficient time, taking into account due diligence, to craft a response to the  
27  
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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,	)	<b>2:15-CR-144-KJD-PAL</b>
	)	
Plaintiff,	)	<b>FINDINGS OF FACT AND</b>
	)	<b>ORDER</b>
v.	)	
	)	
DON EUGENE WHITE,	)	
	)	
Defendant.	)	
_____	)	

**FINDINGS OF FACT**

Based on the pending Motion made by the United States, and good cause appearing therefore, the Court finds that:

1. The Defendant filed a “Motion to Suppress Evidence Seized in Violation of the Fourth Amendment” (“Defendant’s Motion”) on July 1, 2015. *See* Docket #14.

2. Undersigned counsel was in trial in the matter of *United States v. Aaron Thomas*, 2:14-cr-368-APG-PAL up to and including July 2, 2015. Shortly after the conclusion of that matter, undersigned counsel had to prepare for and conduct a suppression hearing in the matter of *United States v. Antwan Fortenberry*, 2:14-cr-387-JAD-NJK. Said suppression hearing occurred on July 6, 2015. Undersigned counsel was also out of the office for a total of five (5) working days during the time from July 6, 2015 to the present.

3. Due to the press of business, undersigned counsel has been unable to adequately research the issues raised in the Defendant’s Motion in order to prepare and file an appropriate

1 response. Additionally, undersigned counsel needs to speak with the police officers who took  
2 part in the instant incident before filing a response.

3 4. Undersigned counsel contacted counsel for the Defendant on July 17, 2015 to  
4 request a stipulation for an extension of the Government's response deadline. Undersigned  
5 counsel was informed by counsel for the Defendant on July 20, 2015 that he (the Defendant)  
6 would not consent to an extension of the Government's response deadline, thereby necessitating  
7 the Government filing the instant motion.  
8

9 5. The Defendant's trial is presently set for August 10, 2015; however, the  
10 undersigned expects that the parties will enter into a stipulation to continue the trial, and that the  
11 trial will be continued, given the presently-ordered briefing schedule for pre-trial motions and the  
12 anticipated necessity to conduct an evidentiary hearing in this matter. This is wholly  
13 independent of the Government's instant request.  
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15 6. The Government is requesting a brief 14-day extension of the response deadline  
16 in order to have sufficient time, taking into account due diligence, to craft a response to the  
17 Defendant's Motion and to schedule a meeting with the police officers involved in this case. The  
18 additional time is not sought for purposes of delay.  
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20 7. The Defendant is in custody. However, the request for a continuance is unlikely  
21 to prejudice the Defendant given the already-existent necessity for a trial continuance based on  
22 the Defendant's Motion; and as explained in paragraph 5, a 14-day continuance of the  
23 Government's response deadline is unlikely to prejudice or affect the Defendant's rights under  
24 the Speedy Trial Act. Additionally, denial of this request for continuance could result in a  
25 miscarriage of justice.  
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27 8. This is the first motion filed herein to continue the Government's response  
28 deadline.

1 For all of the above-stated reasons, the ends of justice would best be served by a  
2 continuance of the Government's response deadline.

3 **CONCLUSIONS OF LAW**

4 The additional time requested herein is not sought for purposes of delay, but merely to  
5 allow the Government adequate time to prepare a response to the Defendant's Motion to  
6 Suppress, taking into account due diligence. The failure to grant said continuance would likely  
7 result in a miscarriage of justice.

8 **ORDER**

9 IT IS THEREFORE ORDERED, that the previously-scheduled response deadline for the  
10 Government to respond to the Defendant's "Motion to Suppress Evidence Seized in Violation of  
11 the Fourth Amendment" (Docket #14) is extended until August 3, 2015,

12  
13 7/20/2015

14   
15 Hon. PEGGY A. LEEN  
16 UNITED STATES MAGISTRATE JUDGE  
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